THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.14183 of 1998

Dated: 07.08.2006

Between
M/s.T.J.Satyanarayana
Rep., by Thota Seenayya

…..Petitioner

and

1.The Joint Collector,, Vizianagaram and others.

….Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.14183 of 1998

ORDER:

This writ petition is filed seeking a writ of Certiorari to call for the records relating to proceedings in Rc.No.2076/98/G.6 dated 12.5.1998 on the file of the 1st respondent respondent-Joint Collector, Vizianagaram and quash the same as illegal and arbitrary.

It seems that the father of the petitioner was licence holder since 1971 under the Petroleum Control Order. Unfortunately he died on 27.2.1998. From 1.4.1998, the petitioner was permitted to run the petrol bunk. While so, on 27.4.1998 an inspection was carried out, at the behest of the 6th respondent the petrol bunk was seized, a mediators report was prepared and the 5th respondent was put as in-charge of the bunk. Being aggrieved by that portion of the order, wherein the 5th respondent was appointed as in-charge, the petitioner filed W.P.No.13601 of 1998 and the same was allowed. Thereafter, the petitioner is running the shop. With regard to the conducting of the panchanama and issuance of the impugned show cause notice dated 12.5.1998, the present writ petition is filed.

Learned counsel for the petitioner states that though the respondent has power to inspect and seize the goods, but, neither the inspection was properly conducted nor the seizure of goods was properly made. According to him, the 1st respondent failed to

draw the samples of MS and HSD in accordance with Clauses 7 (6) and 8 (2) and 8 (4) of the 1990 Order. Therefore, no action can be taken in pursuance of the same. Clause 7 (6) states that while exercising the power of seizure, the authorized officer shall record in writing the reasons for doing so and a copy of which shall be given to the dealer and this was not done in this case. Clause 8 (2) directs that the authorized officer shall take, sign and seal 3 samples of the produce, one to be given to the dealer under acknowledgment with instructions to preserve the sample in his safe custody till the investigation is completed, the 2nd sample be kept by the Department and the 3rd to be sent for laboratory analysis. In this case, neither the petitioner was given sample nor the lable affixed on the sample was jointly signed by the Officer and the dealer. Therefore, the very seizure itself is illegal.

Though no counter is filed, the learned Government Pleader appearing for the respondent strenuously contended that the procedure has been followed as per law. Further this being only a show cause notice, no interference can be made by this Court under Article 226 of the Constitution of India.

Be that as it may. A bare reading of the mediators report would not indicate any samples were sent to the analysis or a bottle of such sample duly signed and sealed by the officer concerned was given to the petitioner herein. Except stating that 6 bottles of

750 ml of Petrol and 3 bottles of diesel were taken, seals were put in their presence, their signatures were taken and that they were informed that the sealed sample would be sent to the analyst, there is nothing much stated in the panchanama, nor any counter

is field asserting that those samples were sent to the analyst and a copy of the same was furnished to the petitioner as required under law.

In view of the above, the very seizure of the goods made on 27.4.1998 is not in accordance with the procedure. Therefore, the impugned show cause notice is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned show cause notice is set aside.

_____

07.08.2006

rkk